

UNITED STATES OF AMERICA,

JOSEPH RYAN KELLY,

Defendant.

ORDER

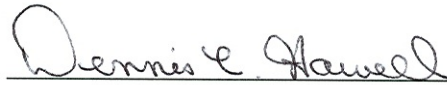
Findings. The undersigned finds that on the 4th of April 2005 this court entered an order detaining the defendant. The findings as set forth in the written order filed April 4, 2005 are incorporated herein by reference. The defendant has presented evidence through the arguments of his attorney that charges that were pending against the defendant in McDowell County, North Carolina, have been dismissed and that as a result of the dismissal of those charges there has been a significant change in circumstances whereby the court should reconsider the undersigned's previous order detaining the defendant. It appears that the defendant was charged on July 3, 2003 with two counts of trafficking in methamphetamine, possession with intent to sell and deliver methamphetamine and possession of Schedule II controlled substances, and possession of cocaine

which is a Schedule II controlled substance. On July 31, 2003 the defendant was charged with possession with intent to sell and deliver a Schedule II controlled substance and possession of a Schedule II controlled substance. On December 22, 2003 the defendant was charged with possession of a Schedule II controlled substance, maintaining a vehicle or dwelling place for the purpose of keeping a controlled substance, possession of drug paraphernalia, hit and run, resisting a public officer, driving while license revoked and injury to personal property. On January 3, 2004 the defendant was charged with driving while license revoked. On March 1, 2004 the defendant was charged with possession of a Schedule II controlled substance and maintaining a vehicle or dwelling place for the purpose of keeping a controlled substance. On October 29, 2004 the defendant was charged with possession of a Schedule II controlled substance. On October 30, 2004 the defendant was charged with possession of a precursor chemical and resisting a public officer by the District Attorney's Office for McDowell County. It has been represented to the undersigned without objection that all of these charges have been dismissed as a result of the present federal indictment. The dismissal of those charges appears to the undersigned to be in reaction to the defendant's plea of guilty to the federal charges herein in which the defendant was charged with conspiracy to manufacture and possess with intent to sell methamphetamine. The fact that the charges were dismissed does not indicate to the undersigned that the criminal acts represented by those charges did not occur and as a result, the undersigned is of the opinion that a change of circumstances regarding this court's decision to detain the defendant has not been shown. Revisiting the factors as set forth under 18 U.S.C. § 3142(g) shows that the nature of the offense charged involves a narcotic drug; the weight of the defendant appears to be significant; the defendant has a significant criminal history, including offenses allegedly occurring at the time of the current offense or arrest while the defendant was on release pending trial or sentencing for state offenses. There appears to

be a serious danger to any person or the community that would be posed by the defendant's release. As was stated in the order filed April 6, 2005: "It is apparent from the alleged activities of the defendant from and after September of 2001 that the defendant, despite repeated arrests, has manufactured methamphetamine. Despite his repeated arrests, the defendant has continued these activities. The use of methamphetamine is detrimental to human health and to the community; further, the manufacture of methamphetamine produces toxic substances which are detrimental to human health and the community. This court is convinced that if the defendant was released on conditions to pretrial release, the defendant would continue these activities." No evidence has been shown to persuade the undersigned that these circumstances have changed to such a degree that would require the pretrial release of the defendant. It is the belief of the undersigned that a release of the defendant would be negligent and not in the best interest of the public or justice,

IT IS THEREFORE **ORDERED** that the Motion for Presentence Release filed herein by the defendant is hereby **DENIED** and the Order of Detention filed on the 4th day of April 2005 in continued in full force and effect.

Signed: August 4, 2005



Dennis L. Howell
United States Magistrate Judge

